

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4759

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ERIC CHRISTOPHER LOCKLEAR,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of North Carolina, at Wilmington. James C. Fox, Senior District Judge. (CR-03-32)

Submitted: September 29, 2004

Decided: October 19, 2004

Before WILKINSON, MICHAEL, and GREGORY, Circuit Judges.

Remanded by unpublished per curiam opinion.

Geoffrey Wuensch Hosford, HOSFORD & HOSFORD, Wilmington, North Carolina, for Appellant. Frank D. Whitney, United States Attorney, Anne M. Hayes, Christine Witcover Dean, Assistant United States Attorneys, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Eric Christopher Locklear seeks to appeal the district court's judgment revoking supervised release and imposing a 24-month term of imprisonment. In criminal cases, the defendant must file an appeal within ten days of the entry of judgment or the notice of appeal by the government. Fed. R. App. P. 4(b)(1)(A). When a notice of appeal is filed within thirty days of the expiration of the appeal period, the district court may grant an extension, with or without a motion, upon a showing of excusable neglect or good cause. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985).

The district court entered its judgment on July 24, 2003. Under Rule 4(b)(1)(A), Locklear had ten days, or until August 7, 2003, to file a notice of appeal. Under Houston v. Lack, 487 U.S. 266 (1988), the notice of appeal was filed on August 18, 2003, which was after the ten-day period expired but within the thirty-day excusable neglect period. The notice of appeal was entered by the district court on September 15, 2003. Because the notice of appeal was filed within the excusable neglect period, we remand the case to the district court for the court to determine whether Locklear has shown excusable neglect or good case warranting an extension of the ten-day appeal period. The record, as supplemented, will then be returned to this court for further consideration. We dispense with oral argument because the facts

and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

REMANDED